IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 336 of 1988

with

CRIMINAL APPEAL No 337 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SALIMBHAI DAUDBHAI BAKROLIYA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 336 of 1988
MR JP GADHAVI for Petitioner
MR BD DESAI, APP for Respondent No. 1

2. Criminal AppealNo 337 of 1988
MR JP GADHAVI for Petitioner
MR BD DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. Both these appeals arise from impugned judgment and order of conviction rendered by the Ld. Addl. Sessions Judge, Sabarkantha at Himatnagar on 20/4/1988 in Summary Case No. 12/1987. The accused no. 2 came to be convicted of the offence punishable u/S. 7 of the Essential Commodities Act. Rest of the accused were acquitted. The truck in question bearing No. GRN 4607 was ordered to be confiscated.

2. The Summary Case/special case in question arose on account of the fact that there was notification of the Collector under the aforesaid Act prohibiting export of grass from District Sabarkantha outside the said district. The said notification was of the year 1986 as referred to in the impugned order. What the learned trial Judge has done is that the notification was assumed to be in force on the date of the incident, namely 12/5/1987. It is this lacuna on the part of the prosecution which has been canvassed in both these appeals by the learned advocate appearing for the appellant. By orders 24/3/2000 and 18/8/2000 both the learned advocate for the appellant as well as Ld. APP were called upon to produce the notification which would indicate that the prohibition for export of grass from District Sabarkantha was in force. Ld. Advocate for the appellant frankly showed the notification dated 15/5/1987 indicating that the prohibition in force was with effect from 15/5/1987 to 31/7/1987. Although this notification referred to communications dated 30/9/1986, 3/12/1986 and 23/12/1986, it did not appear anywhere that the prohibition was in force on 12/5/1987 when the incident occurred. Mr. B.D. Desai, Ld. APP sought time to verify this fact and the matter was adjourned from time to time. Till today notification clearly indicating prohibition of export of grass from District Sabarkantha has not been shown. Hence, on this short point the appellant would succeed. Impugned conviction and sentence of the appellant are hereby set aside. Impugned order of confiscation of truck in question will also stand set aside. The bail bonds of the appellant will stand discharged. Both appeals are accordingly allowed.

* * * * *

PVR.